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CHARLES ELMORE CROPLEY
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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1941

ELIZABETH MORGAN,
Petitioner,

vs.

MILTON C. POTTER, Superintendent of Milwaukee Public Schools of the City of Milwaukee,
Respondent.

No. 607

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF WISCONSIN

A. W. RICHTER,
Counsel for Petitioner.

HAMMERSMITH-KORTMEYER CO., MILWAUKEE

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To the Chief Justice of the United States and Associate Justices of the Supreme Court of the United States:

Elizabeth Morgan respectfully prays that a writ of certiorari issue to review the judgment of the Supreme Court of the State of Wisconsin affirming a judgment of the Circuit Court of Milwaukee County, which denied petitioner a writ of mandamus and dismissed her petition on the merits.

SUMMARY STATEMENT OF MATTERS INVOLVED

Petitioner filed her petition in the Circuit Court of Milwaukee County based upon the allegations that she had been a teacher in the public schools in the City of Milwaukee since 1889, and that, by virtue of the Teachers' Tenure Law of the State of Wisconsin relating to cities of the first class (Section 925 xx (17), and Section 42.55 (18) Statutes of Wisconsin), she had obtained permanent tenure, that the respondent as superintendent of schools of the City of Milwaukee had, in violation of law, refused to assign her to work or to permit her to perform h duties as a teacher.

An alternate writ of mandamus was issued and respondent, by his answer and return to the alternative writ, alleged that petitioner was retired by reason of the fact that she became seventy years of age on October 5, 1938 and that such retirement was under the provisions of Chapter 160 Laws of 1937 of the State of Wisconsin (Section 42.55(12)(K) Statutes of Wisconsin); respondent further alleged that petitioner's services had been satisfactory and that no cause for removal or discharge existed other than by virtue of the terms of Chapter 160 Laws of 1937 of Wisconsin (Section 42.55 (12) (K) Statutes of Wisconsin). He also alleged that in 1909 petitioner became a member of the Milwaukee School Teacher's Annuity and Retirement Fund and that there had been deducted from her salary monthly payments of $2.00 for said fund. (R. 12).

A trial was had before the court at which petitioner urged the invalidity of Chapter 160 Laws of 1937 of Wisconsin (Sec. 42.55(12)(K) Statutes of Wisconsin) because it violates the contract clause of the Constitution of Wisconsin (Article 1, Section 12 Constitution of Wis-

consin,) and Article 1, Section 10, of the Constitution of the United States.

The Trial Court denied the petition and the relief prayed for and filed a written decision (R. 42) and decided that the Statute in question did not impair a contract of petitioner with the City of Milwaukee and did not violate Article 1, Section 12 of the Constitution of the United States.

The Court also filed findings of fact and conclusions of law (R. 50) in which it determined that the Board of School Directors of Milwaukee properly terminated the services of petitioner pursuant to the provisions of Section 42.55(12)(K) and that her services were not terminated by reason of any inefficiency or misbehavior as provided in Sec. 42.55(18) of the Statutes of Wisconsin and that Section 42.55(12)(K) of the Statutes of Wisconsin fixing the compulsory retirement age at seventy is constitutional and does not violate the Constitution of Wisconsin and, more particularly, that it does not violate the provisions of Article 1, Section 10 of the United States Constitution.

The Supreme Court of Wisconsin, the highest court in the State, affirmed the judgment upon the grounds set forth in the written opinion (R. 105 et seq.)

Morgan vs. Potter, — Wis. —, 298 N.W. 763.

Sec. 925 xx (17) of the Statutes of 1919 of Wisconsin, under which petitioner acquired her tenure, is as follows:

> "All elections or appointments of teachers by the board of school directors or other managing bodies in cities of the first class shall be on probation, and after a successful probation for four years, the election or appointment shall be permanent, during efficiency or good behavior, provided that teachers

> having taught four years or more in cities to which this act applies shall be deemed to have served their term of probation. No teacher who has become permanently employed as herein provided by reason of four or more years of continuous service shall be discharged, except for cause upon written charges, which shall after ten days' written notice thereof to such teacher, upon such teacher's written request, be investigated, heard and determined by the board of school directors, whose action and decision in the matter shall be final."

The present statute, Sec. 42.55(18) Statutes of Wisconsin, is the same as the foregoing except that the period of probation has been changed from four to three years.

Section 925 xx was Chapter 510, Laws of Wisconsin of 1909. It established Wisconsin's first Teachers' Annuity and Retirement Fund. As to all teachers then in the service membership in it was voluntary.

Petitioner filed an application and became a member. She remained such up to the time of her removal.

In 1937 an amendment was added to the Statutes, as Section 42.55(12)(K), which is as follows:

> "Any teacher coming under the provisions of this section who has attained or shall attain the age of seventy years shall be retired by the managing body of the schools at the end of the school year in which the said teacher has reached the age of seventy * * *."

The decision and the judgment of the Court rests upon this amendment.

QUESTION PRESENTED

The case presents the question whether a statute of a state is valid which deprives a teacher of her position after she has had tenure for a long period of years and has voluntarily been a member of a retirement fund which made her tenure permanent during good behavior and into which she paid monthly contributions and when she has complied with all the other requirements of such retirement law.

REASONS RELIED UPON FOR ALLOWANCE OF THE WRIT

The Supreme Court of the State of Wisconsin, a court of last resort, has decided a federal question in a way in conflict with the applicable decisions of this Court.

Indiana ex rel. Anderson v. Brand, 303 U.S. 667, 58 S.C. 443, 82 L. Ed. 685.

Under the law of Wisconsin a contract exists and the decision of the Wisconsin Supreme Court constitutes an impairment thereof.

State ex rel. O'Neil vs. Blied, 188 Wisconsin 442.

State ex rel. Dudgeon vs. Levitan, 181 Wisconsin 326.

State ex rel. Nyberg vs. Board of School Directors, 190 Wisconsin 570.

State ex rel. Karnes v. Board of Regents, 222 Wisconsin 542.

Wherefore, it is respectfully prayed that a writ of certiorari be issued out of, and under the seal of, this Honorable Court directed to the Supreme Court of the State of Wisconsin commanding that Court to certify

and send to this Court for its review and determination the full and complete transcript of the record and all proceedings in the case at bar, and that the judgment of the said Supreme Court of the State of Wisconsin may be reversed by this Honorable Court, and that your petitioner may have such other and further relief in the premises as this Honorable Court may deem just and proper, and your petitioner will ever pray.

Respectfully submitted,

A. W. RICHTER,
Counsel for Petitioner.